

REMARKS/ARGUMENTS

Applicant submits this paper in response to the final Office Action dated March 30, 2009. Claims 1-24 are pending in the application. Claims 4-6 and 10-16 are withdrawn from consideration. Claims 1-3, 7-9, and 17-24 stand rejected. Applicant requests reconsideration of the application in light of the remarks made herein.

Applicant respectfully requests that the Examiner reconsider the interpretations afforded to several of the limitations that are presented in Applicant's claims. While claims are given the broadest reasonable interpretation during prosecution, that interpretation must be consistent with the interpretation that would be afforded to the claim limitations by a person of ordinary skill in the art. In re Amer. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004). A reasonable interpretation, by definition, cannot render a claim limitation meaningless such as to read that limitation out of the claim. Bicon, Inc. v. The Straumann Co., 441 F.3d 945, 952 (Fed. Cir. 2006). Applicant further notes that a reasonable interpretation is one that is adopted based on the claims in light of the specification. It is not one adopted by an Examiner in order to conform the meanings of the claim limitations to a particular prior art reference.

Applicant further requests that the Examiner reconsider the content of the Cristy reference. The teachings of the prior art cannot be reshaped as the Examiner finds convenient. Rather, the prior art only teaches what a person of ordinary skill in the art would consider to be "necessarily present in it." MPEP §§2131, 2112. Just as the claims of a patent are not a "nose of wax," neither are the teachings of a prior art reference.

While the Examiner contends that the Applicant has provided no structural features that define the various claim elements, Applicant disagrees and refuses to add further unnecessary

structural limitations to the claims when those limitations will merely be ignored by the Examiner. For these reasons, the Applicant respectfully requests that the Examiner reconsider the interpretations of at least the claim limitations discussed below.

The rejection of independent claim 1 and its dependent claims 2-3, 7-8, and 21-23 is improper. In particular, the Examiner's interpretations of key claim limitations are unreasonable, and the Examiner's findings regarding the teachings of the Cristy reference are not supported by substantial evidence.

I. THE CITED STRUCTURE IN CRISTY IS NOT A RIGID ENCLOSURE

The Examiner has interpreted "rigid enclosure" such that it encompasses the circular plate 230, the circular diaphragm 232, the frame member 240, and the intermediate support means 250 of the embodiment shown in FIG. 9 of the Cristy reference. The plain meaning of the modifier "rigid" precludes a definition that encompasses flexible members and applies, per the terms of the claim, to the entirety of the enclosure. This excludes inclusion of the circular diaphragm 232 of Cristy as a portion of the enclosure, in that the circular diaphragm 232 is described as being adapted to be inflated and deflated by gas in order to raise and lower the intermediate support means 250.

II. THE EXAMINER'S FINDING REGARDING THE ENCLOSURE IN CRISTY IS INCORRECT

The plain meaning of enclosure is something that encloses. However, the "enclosure" identified by the Examiner has no ability to enclose, as the entire interior space is needed for movement of the functional portions of the apparatus, which the Examiner contends are parts of the enclosure. As will be explained, the interpretation is unreasonable.

Applicant submits that the intermediate support means 250 of Cristy is not properly

considered a portion of an enclosure. Rather, the intermediate support means 250 is properly considered disposed within an enclosure formed by the frame member 240 and the circular plate 230 of Cristy. In particular, the disclosure of Cristy makes clear that the frame member 240 and the circular plate 230 are adapted to allow inflation of the circular diaphragm 232 to permit raising and lowering of the intermediate support means 250 of Cristy within the enclosure.

While an enclosure is properly considered something that defines a boundary of an interior of the object, Applicant submits that the intermediate support means 250 is not properly considered to be a boundary, as the majority of this element is disposed within the toroidal configuration of the frame member 240 for the express purpose of transmitting force between the floor 10 and the circular diaphragm 232. Since the intermediate support means 250 is, in fact, the very thing being enclosed, it is improper to consider the intermediate support means 250 a portion of the enclosure of Cristy.

III. THE ALLEGED ENCLOSURE LACKS SUBSTANTIALLY HOLLOW UPPER AND LOWER PORTIONS

The rigid enclosure stated in claim 1 is further defined as having a substantially hollow upper portion and a substantially hollow lower portion. The Examiner has identified the intermediate support means 250 in conjunction with the frame member 240 of Cristy as comprising a substantially hollow upper portion of the enclosure.

By itself, the frame member 240 is properly considered substantially hollow. The intermediate support means 250, however, is comprised of a pair of non-hollow circular plates in a stepped configuration. The intermediate support means 250 is not hollow. The claim language itself requires that the upper portion of the enclosure be substantially hollow, not that some part of the upper portion be substantially hollow. If Cristy is to be considered as having a substantially hollow

upper portion of an enclosure, that upper portion is defined solely by the frame member 240.

While the limitation of a substantially hollow upper portion could be satisfied by a two-part structure, Applicant submits that this would only be possible if both portions of this two-part structure were, in fact, substantially hollow, or together defined a hollow structure. Here, the Examiner has cited a hollow structure that functions to contain a non-hollow structure as, together, constituting a hollow structure. Quite simply, the claim language is not amenable to a construction that reads on a two-part upper portion where one of the parts is substantially hollow and the other is not.

With regard to the substantially hollow lower portion required by claim 1, the Examiner has identified the circular plate 230 and the circular diaphragm 232. The Examiner has defined the lower portion of the enclosure in this manner so that he may consider the space in between the circular diaphragm 232 and the circular plate 230 as causing the resulting structure to be hollow. As previously noted, the circular diaphragm 232 is not properly considered a portion of an enclosure, as it is not rigid, and it does not function as an enclosure. Rather, the diaphragm 232 is a functional element that is housed within the enclosure in order to receive gas that expands and contracts the circular diaphragm 232 in order to raise and lower the intermediate support means 250. The Examiner's construction is not in accordance with the construction that would be given to this reference by a person of ordinary skill in the art. Such a person would recognize that the circular plate 230 is an enclosure portion, while the circular diaphragm 232 is an element housed within the enclosure defined by the circular plate 230 in conjunction with the frame member 240.

IV. CRISTY DOES NOT TEACH TELESCOPICALLY ADJUSTABLY CONNECTED ENCLOSURE PORTIONS

Claim 1 further requires that the substantially hollow upper portion of the enclosure be

“telescopically adjustably connected” to the substantially hollow lower portion of the enclosure to provide for various sizes of the enclosure. The Examiner contends that the frame member 240 and the intermediate support means 250 constitute an upper portion of an enclosure that is telescopically adjustably connected to the circular plate 230 and the circular diaphragm 232, which the Examiner has defined as a substantially hollow lower portion of the enclosure. In the paper dated March 30, 2009, the Examiner explains that he considers Cristy to include an upper portion that is telescopically adjustably connected to a lower portion because the intermediate support means 250 is movable with respect to the circular plate 230. In doing so, the Examiner purports to dissect the upper enclosure portion that he has identified, finding it sufficient that part, but not all, of the structure identified as the upper enclosure portion meets the claim limitation. Quite simply, this is improper in that the claim requires that the upper portion of the enclosure be telescopically adjustably connected to the lower portion of the enclosure, not that at least a portion of the upper portion of the enclosure be telescopically adjustably connected to the lower portion of the enclosure.

Even accepting the Examiner’s dissection as proper structure does not meet the claim limitation. The plain meaning of the word “telescopic” requires tubular members that are designed to slide into one another. To the extent that Cristy contemplates a telescopic motion, it is between the intermediate support means 250 and the frame member 240. Since these elements have been identified by the Examiner as both constituting parts of the upper portion of the enclosure, this structural relationship cannot be considered to be telescopic adjustability between the upper and lower enclosure portions.

With respect to the circular plate 230 and the diaphragm 232, the intermediate support means 250 does nothing more than raise or lower on top of the circular diaphragm 232. There is no

telescopic relationship between the intermediate support means 250 and either of the circular plate 230 or the circular diaphragm 232. There is also no telescopic relationship between the frame member 240 and either of the circular plate 230 or the circular diaphragm 232, as the frame member 240 is connected to the circular plate 230 by bolts, and the circular diaphragm 232 is captured in between the flanges 234 of the frame member 240 and the circular plate 230 so that gas may be sealed within the diaphragm 232. For the foregoing reasons, the structures in Cristy, as identified by the Examiner, cannot be considered to constitute a substantially hollow upper portion of an enclosure that is telescopically adjustably connected to a substantially hollow lower portion of an enclosure.

V. CRISTY LACKS THE MEANS FOR RIGIDLY CONNECTING OF CLAIM 1

Claim 1 further requires means for rigidly connecting the upper portion of the enclosure to the lower portion of the enclosure for fixing the position of the upper portion of the enclosure with respect to the lower portion of the enclosure. The Examiner has identified the bolts that connect the flanges 234, 236 of the frame member 240 of Cristy to the circular plate 230 as constituting a means for rigidly connecting the upper portion of the enclosure to the lower portion of the enclosure. Applicant again notes that the Examiner has identified two elements, namely the intermediate support means 250 and the frame member 240, as constituting an upper portion of an enclosure. Again, the Examiner finds it convenient to dissect the upper portion of the enclosure in order to meet this claim limitation by considering only the frame member 240 with respect to this claim limitation, rather than considering both the frame member 240 and the intermediate support means 250. The claim language in issue cannot be satisfied when one part of the upper portion of the enclosure is rigidly connected to the lower portion of the enclosure, but another is not. This is because the claim language expressly states that the upper portion of the enclosure is rigidly connected to the lower portion of the enclosure.

It does not state that at least part of the upper portion of the enclosure is rigidly connected to the lower portion of the enclosure. Accordingly, Cristy does not meet this claim limitation.

VI. THE EXAMINER HAS NOT PROPERLY ANALYZED THE MEANS FOR PROVIDING A LEVELING ADJUSTMENT OF CLAIM 1

Claim 1 also requires means for providing a leveling adjustment of the machine foundation. Under 35 U.S.C. §112, sixth paragraph, a claim limitation drafted in means plus function format must be interpreted by identifying the relevant structure in the specification and interpreting the claim language to cover the structure shown, as well as substantial equivalence thereof. Applicant notes that the Examiner has failed to do so. Furthermore, the Examiner has identified the circular diaphragm 232 as means for providing a leveling adjustment. While the Applicant does not dispute that this element provides this function, Applicant submits that the circular diaphragm 232 cannot be considered to comprise both a portion of a rigid enclosure, as the Examiner has done, and also as a means for providing a leveling adjustment. This application of the Cristy reference is inconsistent and improper.

For at least the reasons stated above, Applicant respectfully requests that the Examiner withdraw the rejection of independent claim 1 and its dependent claims 2-3, 7-8, and 21-23.

VII. CRISTY FAILS TO TEACH THE ANCHOR RING OF CLAIM 3

The rejection of dependent claim 3 is improper for the reasons stated in regard to the rejection of independent claim 1, as well as for the reasons that follow. Claim 3 requires that the lower portion of the enclosure has an anchor ring that extends into the interior of the enclosure. By its plain meaning, "extends into the interior of the enclosure" requires some sort of protrusion. Mere adjacency to the interior cannot be considered to constitute extending into the interior, as doing so

would render this language meaningless. However, the Examiner contends that the upper surface extends into the interior. This interpretation of the language “extends into the interior” is unreasonable in that it renders the language meaningless, and thus, the circular plate 230 of the Cristy reference cannot be considered to extend into the interior of the enclosure.

VIII. CRISTY FAILS TO TEACH THE BEARING MEMBER OF CLAIM 3

Claim 3 further requires a bearing member disposed within the enclosure and adjustably connected to the anchor ring to provide a leveling adjustment for the machine foundation. The Examiner has identified the intermediate support means 250 as constituting a bearing member, and reasons that it is adjustably connected to the anchor ring, which the Examiner has identified as the circular plate 230, by virtue of the fact that the intermediate support means 250 is disposed on top of the circular diaphragm 232. The Examiner has interpreted “adjustably connected” so broadly as to deem two members adjustably connected where the one is resting on top of an inflatable air bag that is resting on top of the other structure. While this might allow adjustment of the first member with respect to the second member, it in no way comprises a connection. Rather, it is nothing more than a stack of otherwise disconnected elements.

IX. CRISTY FAILS TO TEACH THE SUPPORT MEMBER OF CLAIM 3

Claim 3 further requires a support member that is in contact with the bearing member and engageable with the substructure for isolating the machine foundation from the substructure. The plain meaning of “contact” is “physical touching.” Exhibit 1, “Contact”, The New Oxford American Dictionary, 2nd ed., 2005. Here, the Examiner appears to have identified a portion of the intermediate support means 250, as well as the circular diaphragm 232 as comprising the support member. These structures, even when taken together, are not engageable with the substructure in the apparatus of

Cristy, in that they are separated from the substructure by the circular plate 230. In response to the Examiner's suggestion that the two members "engage by the lower portion," this is in contravention of the claim language which requires contact between the support member and the substructure. While it is possible that "contact" could encompass interposition of trivial elements, it is rendered meaningless when it is read to allow interposition of the housing. Accordingly, the Examiner's definition of "contact" is unreasonable.

For at least the reasons stated above, Applicant respectfully requests that the Examiner withdraw the rejection of dependent claim 3.

X. THE ENCLOSURE PORTIONS IDENTIFIED BY THE EXAMINER ARE NOT TUBULAR

Claim 21 requires that the upper portion of the enclosure be substantially tubular and have open ends, as well as that the lower portion of the enclosure be substantially tubular and have open ends. Regarding the upper portion of the enclosure, while the frame member 240 might be substantially tubular, the intermediate support means 250 is not. Since both of these elements have been identified by the Examiner as comprising the upper portion of the enclosure, both must be tubular and have open ends in order to meet the limitations of this claim. Since the intermediate support means 250 does not, the structure cited by the Examiner does not constitute an upper portion of an enclosure as claimed.

With regard to the lower portion of the enclosure, the Examiner contends that the circular plate 230 is tubular because it is in the shape of a ring and that it has open ends at its top and bottom surfaces. The plain meaning of "tube" refers to any of various structures or devices such as a hollow, elongated cylinder or a soft container whose contents can be removed by squeezing. Exhibit 2,

“Tube”, The Merriam Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/tube>, accessed on May 28, 2009. Exhibit 3, “Tube,” Dictionary.com, <http://dictionary.reference.com/browse/tube>, accessed on May 28, 2009. Quite simply, the plain meaning of tube requires a hollow interior. The Examiner seems to suggest that the word “tube” is nothing more than a synonym for cylinder. This ignores the plain meaning of the word.

The Board of Patent Appeals and Interferences has previously reversed a rejection based on a similarly unreasonable interpretation of the word tube. See Ex Parte Morris et al., Appeal No. 2009-001690, Slip Opinion at p. 12 (BPAI 2009). In that case, the Examiner asserted that a flat piece of material having an aperture through it was a tube. The Board responded that the Examiner’s interpretation effectively read that limitation out of the claim. Applicant is confident that the Board will reach the same conclusion in this case.

For at least the reasons stated above, Applicant requests that the Examiner withdraw the rejection of claim 21.

XI. THE EXAMINER’S INTERPRETATION OF “INTEGRAL” IN CLAIM 22 IS UNREASONABLE

With regard to claim 22, that claim requires that the upper and lower portions of the enclosure are fabricated as integral bodies. The Examiner reasons that this claim limitation, because of the presence of the word “fabricated,” renders claim 22 a product-by-process claim. Applicant is, quite simply, puzzled by this conclusion. These claim limitations do nothing more than state structural properties of the upper and lower portions of the enclosure and do not recite any process steps. Regardless, the Examiner reasons that “the pieces are integral in that they are attached to each other.” Applicant reminds the Examiner that he has denoted the frame member 240 and the intermediate

support means 250 of Cristy as constituting the upper portion of the enclosure. No connection is disclosed in Cristy between these two elements. Rather, in Cristy, the intermediate support means 250 is moveable with respect to the frame member 240, and the two members are not necessarily in contact with one another. While disposition of the intermediate support means within the frame member 240 is operable to restrain the motion of the intermediate support means 250, it is unreasonable to contend that the possibility of engagement between two separate, relatively moving elements renders them an integral body.

XII. THE CITED STRUCTURE IS NOT CAPABLE OF PERFORMING THE FUNCTION STATED IN CLAIM 23

Claim 23 requires that the rigid enclosure be connectable to the machine foundation to define a first open end of the rigid enclosure at a top surface of a machine foundation and a second open end of the rigid enclosure at a bottom surface of a machine foundation. Applicant agrees that since the machine foundation is not positively claimed, the only relevant issue is whether the structure shown in Cristy would be capable of performing the stated function.

The Examiner disingenuously asserts that the opening in the top of the frame member 240 could constitute a first open end of the enclosure at a top surface of a machine foundation and that the inner face between the frame member 240 and the circular plate 230 could constitute an open end at a bottom surface of the machine foundation. It is apparent on reviewing the structure shown in Cristy that the enclosure, identified by the Examiner as including the circular plate 230, would not define an open end if connected to a machine foundation, as specified in the claim. Rather, the circular plate 230 defines a closed end of the enclosure.

If the structure shown in Cristy were connected to a machine foundation, in the manner

required by the functional limitations stated in claim 23, the bearing member identified by the Examiner would have no capacity to engage the machine foundation to level the machine foundation, and the structure of Cristy would not be operable to isolate the machine foundation from the substructure, because circular plate 230 would be at the bottom surface of the machine foundation. As a result, the structure of Cristy would be completely inoperable for its intended purpose. Rather, the machine foundation, such as the floor 10 of Cristy, would do nothing more than rest against the substructure. Accordingly, the Examiner's suggestion that the structure shown in Cristy is capable of performing the functions required by claim 23 is without merit.

XIII. THE REJECTION OF INDEPENDENT CLAIM 9 AND ITS DEPENDENT CLAIMS 17-18 AND 24 IS IMPROPER

Applicant notes that claim 9 requires a rigid enclosure connectable to the machine foundation that has a substantially hollow upper portion and a substantially hollow lower portion that are telescopically connected to one another to provide for various sizes of the enclosure. As explained in connection with claim 1, the Cristy reference does not teach a rigid enclosure as claimed in claim 9.

Applicant next notes that claim 9 requires that the lower portion of the enclosure have an anchor ring that extends into the interior of the enclosure. As explained in connection with claim 3, the Cristy reference does not disclose an anchor ring as claimed in claim 9.

Claim 9 further requires a plurality of fasteners that connect the bearing member to the anchor ring in a vertically-spaced relationship for vertical adjustment of the anchor ring with respect to the bearing member to provide a leveling adjustment of the machine foundation. The Examiner has identified an upper part of the intermediate support means 250 of Cristy as a bearing member. The Examiner contends that a series of fasteners, namely bolts that connect the circular plate 230 of Cristy

to the frame member 240, as well as a fastener that connects the two separate parts of the intermediate support means 250 of Cristy to one another constitute the plurality of fasteners contemplated by claim 9.

None of the fasteners cited by the Examiner connects the circular plate 230 of Cristy to the part of the intermediate support means 250 identified by the Examiner as a bearing member. Rather, the intermediate support means 250 of Cristy is movable with respect to the circular plate 230 and its range of motion is not dictated by any of the fasteners in question. The restraints placed on the range of motion of the intermediate support means 250 are imposed by disposal of a lower part of the intermediate support means 250 within the frame member 240, not by the fasteners cited by the Examiner.

The Examiner further contends that the fasteners that connect the frame member 240 to the circular plate 230 provide vertical adjustment of the anchor ring with respect to the bearing member to provide a leveling adjustment of the machine foundation. Applicant notes that these fasteners connect the frame member 240 of Cristy to the circular plate 230 of Cristy. Utilizing these fasteners for an adjustment purpose is not taught by Cristy. While the Examiner contends that these fasteners could be used for this purpose, inherency requires that the feature in question is necessarily present in the prior art reference. Here, adjustability by way of the noted fasteners is not contemplated. This is evidenced by the fact that the circular diaphragm 232 of Cristy is captured between the flanges 234, 236 of the frame member 240 and the circular plate 230. The sole function of this connection is to capture the circular diaphragm 232 to provide an airtight seal so that the circular diaphragm 232 may be inflated. Loosening these fasteners to adjust the structure, as proposed by the Examiner, would render the structure taught by Cristy inoperable, in that the circular diaphragm 232 would not longer

be airtight.

In addition to the foregoing, loosening the fasteners cited by the Examiner would not provide a leveling adjustment. At best, it would modify the permissible range of motion of the intermediate support member 250.

Claim 9 further requires a support member that is contact with the bearing member and is engageable with the substructure for isolating the machine foundation from the substructure. The Examiner has identified a lower part of the intermediate support means 250 of Cristy, as well as the circular diaphragm 232 of Cristy, as the support member. As explained in connection with claim 3, neither of these elements is engageable with the substructure in the apparatus of Cristy.

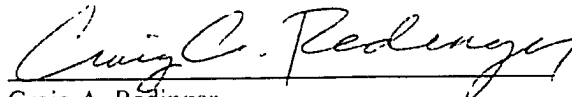
For at least the foregoing reasons, Applicant requests that the rejection of claim 9 and its dependent claims be withdrawn.

XIV. THE EXAMINER'S INTERPRETATION OF "INNER PERIMETER" IN CLAIM 24 IS UNREASONABLE

Claim 24 requires that the anchor ring have an inner perimeter and that the fasteners be arrayed around the anchor ring adjacent to its inner perimeter. The Examiner has cited a location on the circular plate 230 of Cristy that is undeniably its outer perimeter. Quite simply, an outer perimeter is not an inner perimeter. Accordingly, this rejection should be withdrawn.

If the Examiner has any questions or comments regarding this matter, Applicant's undersigned counsel may be reached at (734) 662-0270 or by electronic mail at redinger@ybpc.com.

Respectfully Submitted,



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